

JADE WRIGHT,

Complainant,

v.

GOLDIE'S, INC.

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER**

On July 23, 2013, Noell F. Allen Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") entered her Proposed Findings Of Fact, Conclusions Of Law, And Order ("the proposed decision").

No objections have been filed to the ICRC's adoption of the proposed decision. However, Respondent has filed its NOTICE TO CIVIL RIGHTS COMMISSION ("Notice") on July 30, 2013. (See attached).

Having carefully considered the foregoing and being duly advised in the premises, the ICRC hereby denies Respondent's request "that Michael Goldsmith be relieved from the requirement to receive training as set forth in the Order". Mr. Goldsmith shall complete the sexual harassment training as prescribed by the proposed Order. The ICRC adopts as its own the findings of fact, conclusions of law, and order proposed by the ALJ in the proposed decision, a copy of which is attached hereto and incorporated herein by reference.

INDIANA CIVIL RIGHTS COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER

Dated this 27th Day of September, 2013.

To be served on the following:

Jade Wright
10901 County Road 700 South
Selma, IN 47383

Goldie's, Inc.
c/o Mike Goldsmith
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The Law Office of Chris M. Teagle
BY: Chris M. Teagle, Esq.
Attorneys for Respondent Goldie's, Inc.
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and to be personally served on the following attorney of record:

Frederick S. Bremer, Esq.; Staff Attorney
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STATE OF INDIANA)

DOCKET NO. EMsh11030099

CIVIL RIGHTS COMMISSION)

EEOC NO. 24F-2011-00173

JADE WRIGHT,
Plaintiff

VS

GOLDIE'S, INC.,
Defendant

NOTICE TO CIVIL RIGHTS COMMISSION

Comes now the Defendant, Goldies, Inc. by counsel, Chris M. Teagle, and would show the Court as

follows:

1. That the business, Goldies, Inc., was terminated in January of this year, prior to the issuance of the Order dated July 23, 2013.
2. That there is no intention to reopen the business.
3. That as such, the Defendant requests that Michael Goldsmith be relieved from the requirement to receive training as set forth in the Order.

Respectfully Submitted,



Chris M. Teagle #2278-18
Attorney for Defendant
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Telephone: (765) 287-0881
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing has been served upon Frederick S. Bremer, this 30th day of July, 2013.


Chris M. Teagle

JADE WRIGHT,

Complainant,

v.

GOLDIE'S, INC.

Respondent.

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

A hearing was held in this case before Administrative Law Judge (“ALJ”) Robert D. Lange for the Indiana Civil Rights Commission (“ICRC”) on April 9 2012. On May 24, 2012, the parties submitted to the ALJ suggested Findings of Fact and Conclusions of Law and Order. On December 26, 2012, Judge Lange retired from the ICRC as ALJ without having made a decision. The ICRC appointed the undersigned as ALJ on July 2, 2013.

Having carefully considered the foregoing and being duly advised in the premises, the undersigned ALJ proposes that the ICRC enter the following as findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. The issue to be resolved in this case is whether Goldie’s, through its owner Michael Goldsmith discriminated against Wright on the basis of sex by subjecting her to unlawful sexual harassment.

2. Goldie’s, is a corporation employing more than six employees at all times material to this case in that there were 7 to 8 people working there to serve breakfast alone.

3. Wright was formerly employed by Goldie's, a company engaged in the operation of a bar in Eaton, Indiana. She was employed as a bartender and a waitress, but did other things such as cooking and stocking.

4. During the time she was employed by Goldie's, Wright answered to Michael Goldsmith ("Goldsmith") and Regina Bailey ("Bailey"), another Goldie's employee who co-managed to some extent with Goldsmith.

5. Bailey was also Goldsmith's girlfriend for a continuous period of eight months through January to February, 2011. Although Bailey and Goldsmith had separate residences they occasionally stayed at each other's houses.

6. At some point during Wright's employment, Goldsmith started coming back to the bar's kitchen where Wright, making comments about him falling in love with her, how beautiful she was and that he wanted to kiss her. These were offensive to Wright.

7. Following an incident of the preceding evening, Goldsmith apologized to Wright for his behavior in this incident of which Wright had no memory telling her he had kissed her and had his hands on her in the bar office.

8. Goldsmith's disclosures to Wright about his conduct towards her that she could not remember upset her very much. Describing this, Wright stated that she just closed up and freaked out.

9. Goldsmith took the liberty of smacking Wright on the butt when he walked by her. He acknowledged that he had kissed Wright on at least 6 occasions, five of them in the kitchen area of the bar. Wright described one of these situations, saying that Goldsmith cornered her in the kitchen area by the refrigerator. Wright told Goldsmith to stop.

10. Goldsmith eventually asked Wright to go with him to a hotel, telling Wright that he would explain his absence to Bailey as being due to his attendance at a bachelor party. Under the pressure of knowing that Bailey, Goldsmiths' girlfriend was located just three chairs away when he was talking along these lines and just to keep him quiet, Wright told Goldsmith that she would go to the hotel. And as it turned out they did not do this despite Goldsmith making the reservations.

11. By the next weekend after Goldsmith's invitation to Wright to go with him to the hotel, Goldsmith again apologized to Wright, this time promising not to kiss her or touch her again. He did this upon sensing that the kissing and touching accounted for Wright becoming observably short and rude with customers. Even he acknowledges that he began to feel differently about Wright enjoying what he was doing like he thought originally.

12. True to his apology Goldsmith ceased kissing Wright and making advances to her. But by this time Goldsmith had told his girlfriend Bailey that he and Wright had kissed and that this behavior was engaged in mutually.

13. Contrary to Goldsmith's assertions to Bailey that his intimate conduct towards Wright was mutual, Wright maintains that Goldsmith forced himself and his kisses on her physically, and the following evidence supports the accuracy of her version:

(a) Immediately after one of these incidents in which Goldsmith physically groped Complainant in the bar's kitchen, Wright while discernibly upset and crying came out to tell Ronald Riggan, customer, what had just happened, and he confirmed this to be the case.

(b) Goldsmith acknowledged to Wright's father, David Wright, in a statement confirmed as having been also heard by Wright's stepmother, Lisa Neely that he had hit on Wright and made sexual advances to her.

(c) Goldsmith's apology to Wright, promising he would never kiss her again, an apology and promise even he admitted doing, supports a reasonable inference that he had done something to Wright with which she took offense and that he knew the same to be the case.

(d) Even Goldsmith took Wright's poor attitude in the workplace as linked to his behavior with her, and if his behavior toward Wright was mutual as he claimed, there was no reason for Wright to have a bad attitude connected with the kissing and other overtures. This tends to confirm that what he had done was not mutually desired.

14. The next weekend following the one in which he apologized, Goldsmith decided to terminate Wright's employment due to a combination of deficiencies showing up about that time when the beer was counted and also due to Wright's attitude reflected in Wright's remarks he overheard to Goldie's customers asking whether help was needed at another bar. Goldsmith felt that Wright was doing these things in retaliation against him.

15. In the course of a phone conversation Bailey first advised Complainant that her employment with Goldie's was to be terminated upon the mutual decision of Bailey and Goldsmith, citing a documented customer complaint of a Mr. Steve Gadbury as the reason.

16. Bailey declared that one of the reasons for the termination of Wright was her attitude being short and snappy with customers leading to customer complaints although Bailey could not even remember the name of even one of these customers, not even that of Stave

Gadbury. But Bailey acknowledged that whenever she had brought up anything like this in the past with Wright, Wright corrected the behavior. (T, 126-129,131).

17. Later the same day of Wright's phone conversation with Bailey in which she was informed of her being terminated, Wright kept a previously arranged appointment to personally meet with Goldsmith and to then and there contest her employment being terminated and the reasons advanced for the same. Accompanying her at her request was Steve Gadbury, and he personally confirmed to Goldsmith that he had not seriously complained about Wright, all the while imploring Goldsmith not to fire Wright.

18. At the same meeting that was attended by Gadbury, Goldsmith started raising a deficiency in the beer count as a justification for terminating Wright's employment. Bailey had not mentioned this deficiency before to Wright.

19. Over the opposition of Bailey (T, 122), Goldsmith decided to give Wright another chance and told her to report for work the following Saturday. Goldsmith told Wright that the next week they would start fresh. (T, 184-185). He explained his actions to Bailey, saying that he gave Wright a second chance to see how she did.

20. Upon reporting to work the next Saturday, Wright never got to work again for Goldsmith to see how she did but was rather immediately called into another meeting with Goldsmith and Bailey at which time Goldsmith told Wright that her employment was to be terminated after all.

21. In his testimony Goldsmith once more asserted the deficiency in the beer count and Wright's attitude as the reasons for ultimately terminating Complainant's employment (T, 187) despite his stated earlier willingness to give Wright an opportunity to start fresh, free of those considerations, and give Complainant another chance to see how she did. As it turns out

Goldsmith never did give Complainant such a chance to provide proof of how well she could do under the new circumstances.

22. Goldsmith explained his reversal of his decision to give Wright another chance as being due to all the talk he was hearing that next week around town, about none of which he gave specifics or even the identity of the persons doing the talking.

23. Goldsmith's sexual harassment of Wright was severe and pervasive enough to alter the conditions of Wright's employment causing her considerable emotional distress.

24. The evidence supports a conclusion that Wright should be given the second chance to prove how well she could do working once more as a bartender for Goldie's.

CONCLUSIONS OF LAW

1. ICRC has jurisdiction over the subject matter and the parties.
2. Wright and Goldie's are each a "person" as that term is defined in IC 22-9-1-3(a).
3. Goldie's is an "employer". IC 22-9-1-3(h), cf. 910 IAC 1-1-1(H),(I).
4. The term "discriminatory practice" is defined in the following subsection of the ICRL:
(1) "Discriminatory practice" means:

- (1) the exclusion of a person from equal opportunities because of race ...sex
...national origin or ancestry.
...

Every discriminatory practice relating to ...employment...shall be considered unlawful unless it is specifically exempted by this chapter.

IC 22-9-1-3(1)

5. Wright's claim is subject to adjudication in accordance with the provisions of the ICRL. IC 22-9-1-1 *et seq.* and its prohibition of discrimination on the basis of sex. IC 22-9-1-3(1).

6. In interpreting the ICRL, it is appropriate to consult cases decided under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e ("Title VII"). *Filter Specialists, Inc. V. Brooks*, 906 N.E.2d 835, 839 (Ind. 2009); *Indiana Civil Rights Comm'n v. Culver Educ. Found*, 535 N.E.2d 112, 115-16 (Ind. 1989).

7. Sexual harassment is a form of sex discrimination prohibited by Title VII. *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 65 (1986). The harassment must be sufficiently severe or pervasive "to alter the conditions of employment and create an abusive working environment. *Id.* at 67. The conduct must adversely affect the work performance and well-being of both the particular plaintiff and a reasonable person. *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21-22, 114 S. Ct. 367, 370-371, 126 L.Ed.2d 295, 63 FEP Cases 225 (1993); *Saxton v. American Telephone & Telegraph*, 10 F.3d 526, 534, 63 FEP Cases 625 (7th Cir. 1993); *Brooms v. Regal Tube Co.*, 881 F.2d 412, 419, 510 FEP Cases 1499 (7th Cir. 1989).

8. In assessing the hostility of the environment, the circumstances to be considered include "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Harris, supra.* at 510 U.S. 23. These specified circumstances are but a suggested "non-exhaustive list of relevant factors" that could be

considered by a court in determining whether the environment is of the requisite hostility. *Black v. Zaring Homes*, 104 F.3d 822, 826, (6th Cir. 1997).

9. Among other factors not listed in *Harris* is the degree of control that the harasser has over the victim. The degree to which a supervisor holds power over a subordinate employee victim of his unwelcome sexually harassing behavior can, in combination with that behavior, become tantamount to a level of coercion sufficient to establish an unlawful hostile working environment. *Carrero v. New York City Housing Authority*, 890 F.2d 569, 578, 51 FEP Cases 596, 602-603 (2nd Cir. 1989). Another factor that may be considered is the extent to which the victim has to work closely with the harassing supervisor. *Abeita v. Transamerica Mailings*, 159 F.3d 246, 252, 78 FEP Cases 364, 368 (6th Cir. 1998)

10. Illegal sexual harassment need not be detected through the use of a “mathematically precise test.” *Harris, supra.* at 22. There is no bright line to determine when “merely vulgar and mildly offensive “conduct crosses it and becomes the “deeply offensive and sexually harassing” conduct constituting actionable sexual harassment. *Baskerville v. Culligan International Co.*, 50 F.3d 428, 431, 67 FEP Cases 564,566 (7th Cir. 1995).

11. Wright proved that Goldie’s subjected her to discriminatory practice on the basis of sex as defined at Ind. Code 22-9-1-3(1) in violation of the ICRL, to-wit: unlawful sexual harassment, sufficiently severe and pervasive to alter the conditions of her employment.

12. If ICRC finds that a person has committed an unlawful discriminatory practice, it shall issue an order requiring the person to cease and desist from that practice and requiring that person to take further affirmative action as will effectuate the purposes of the ICRL, which affirmative action may include restoring complainant’s losses and requiring respondent to file proof of compliance. IC 22-9-1-6(k).

13. Requiring an employer guilty of engaging in severe and pervasive sexual harassment of a former employee to give that employee another chance if otherwise qualified to re-engage in the same employment for the same employer free of sexual harassment and the emotional distress of sexual harassment victimization serves the purposes of the Indiana Civil Rights Law.

14. Wright has the qualifications to be re-employed by Goldie's.

15. Administrative review of this proposed decision may be obtained by the filing of a writing identifying with reasonable particularity each basis of each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d)

16. Any Finding of Fact that should have been deemed a Conclusion of Law is hereby adopted as such.

ORDER

1. Goldie's shall cease and desist from subjecting its employees to sexual harassment through the actions of Michael Goldsmith or anyone else.

2. During the course of the three years following the Commission's adoption of this Order, Goldie's shall inform Wright by telephone or by electronic mail of all open bartender positions for which it is seeking applicants for employment and offer the opportunity to Wright to first refuse these open positions before employing anyone else to fill them. Following Wright's acceptance of any such position, Goldie's' obligation to extend a right of first refusal concerning any other bartender jobs shall immediately cease.

3. Goldie's shall make arrangements for Michael Goldsmith to receive training acceptable to the Deputy Director of the Civil Rights Commission regarding the subject of discrimination on the basis of sex and with particular emphasis on sexual harassment. Goldie's

is ordered to provide proof within three months of the date this Order is adopted by the Civil Rights Commission that Michael Goldsmith has completed the training.

Dated this 23rd Day of July, 2013

Noell F. Allen
Administrative Law Judge

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